

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re CORIN V. et al., Persons Coming
Under the Juvenile Court Law.

B160059
(Los Angeles County
Super. Ct. No. CK 48820)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

JULIA V.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Emily Stevens, Judge. Affirmed.

Roni Keller, under appointment by the Court of Appeal for Appellant and Respondent Julia V.

Lloyd W. Pellman, County Counsel and Judith A. German, Senior Deputy County Counsel for Respondent and Appellant Department of Children and Family Services.

Janette Freeman Cochran, under appointment by the Court of Appeal for Appellant Ernesto V.

Julia V. (Mother) appeals an order finding jurisdiction under Welfare and Institutions Code¹ section 300, subdivision (b), and the dispositional order removing her minor child, Ernesto V., from her home and placing him with a paternal aunt after Ernesto sustained unexplained bruises to his body. Mother contends the findings are not supported by substantial evidence. The Los Angeles Department of Children and Family Services (Department) appeals the denial of a jurisdictional finding under section 300, subdivision (a), and argues that jurisdiction under section 300, subdivision (b), is supported by substantial evidence. Ernesto, who initially appealed the order, requests that this court affirm jurisdiction under section 300, subdivision (b), and the order placing him with his paternal aunt.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Julia is the mother of minors Corin V. (born in March 1994) and Ernesto (born in November 1999). Corin's father is Baltazar N.; Ernesto's father, Ernesto H., resides in Mexico. Mother works in an embroidery factory six or seven days a week from 7:00 a.m. to 3:00 p.m. Carmen, Ernesto's paternal aunt, babysits the children while Mother is at work.

The Detention Report indicated that on April 24, 2002, Carmen noticed bruising to Ernesto's face and ear, as well as on his penis. She had not noticed the marks the day before when she babysat Ernesto. She took him to El Monte Community Hospital, where he was examined by Dr. Alfred Cook, who found the injuries to be consistent with child abuse. Ernesto was detained.

Mother was arrested and taken into custody, where she was interviewed by CSW John T. Casey, with Detective Gutierrez of the El Monte Police Department translating. She denied abusing Ernesto, and stated she did not know how the injuries occurred.

¹ All further references are to the Welfare and Institutions Code unless otherwise noted.

Detective Eric Youngquist of the El Monte Police Department also interviewed Mother, and believed her explanation of Ernesto's injuries was not consistent with the injuries. Mother told conflicting stories and was evasive and not interested in cooperating with Detective Youngquist. Detective Youngquist ruled out Carmen as a perpetrator because she took Ernesto for treatment and was concerned for the minor's well-being. Detective Youngquist learned that a few months earlier, Ernesto had sustained a fracture of the leg, and Carmen had brought him in for treatment. Mother was placed under arrest for violation of Penal Code section 273, subdivision (d), inflicting corporal injury upon a minor. Ernesto's sister, Corin, denied seeing Mother abuse Ernesto. Corin had no bruising or other injuries, and denied being abused or neglected by Mother.

The petition, filed April 29, 2002, contained allegations under section 300, subdivisions (a), (b), (d), (e), (g) and (i). At the April 29, 2002, detention hearing, Corin was released to her father, Baltazar. Mother was given monitored visitation, and Ernesto was ordered detained in shelter care.

The jurisdiction hearing report indicated that Ernesto had been placed with Carmen. Ernesto had sustained bruising on both sides of his face and ear and to his penis. The trauma to his penis was consistent with it having been squeezed. These injuries were not consistent with Mother's explanations but were consistent with child abuse.

When Corin was interviewed, she stated that she had never seen Mother hit Ernesto. Mother did not hit, but only screamed at the children. Corin further stated that Ernesto told her that "Mario" was responsible for his injuries. Corin advised the social worker that Mario was her mother's employer from her nighttime job selling newspapers. On Fridays, Mario picked them up and took them out to eat while Mother stayed home to rest and clean the house. Corin never saw Mario hit Ernesto or be alone with Ernesto.

Ernesto had told Corin that his “huevitos” (penis)² hurt him. Ernesto told Mother and Mother did not believe him. Mother checked Ernesto’s penis and both Mother and Corin could see that it was bruised and purple.

At her interview with the social worker, Mother denied abusing Ernesto. She did not know how he received the bruises to his face, but that it has happened on two prior occasions. Previously, Carmen took him to the doctor, who said it might be allergies and prescribed a cream. The bruises would last for three or four days and then disappear. Ernesto was active and liked to play, and she thought Ernesto might have fallen from his skateboard. Apparently, she told the police previously that Ernesto had a blood disorder and that might have caused his bruising. She told the social worker Ernesto had not been diagnosed with a blood disorder or any other medical condition. Occasionally, he got the flu or bronchitis.

Mother admitted that Ernesto fractured his leg in February 2002. When she picked him up from Carmen’s house, he did not tell her his leg was hurting. He was crying, but he usually cried when she picked him up from Carmen’s because he wanted to stay at Carmen’s house. The next day she noticed that he was unable to stand, and Carmen took him to the hospital. Ernesto was diagnosed with a fracture and placed in a cast. Mother did not know why Ernesto stated that Mario was the one who caused the bruises, and she did not believe it to be true.

Mother did not know how Ernesto bruised his penis. She denied doing it, and did not suspect anyone of doing it to him. At first, she thought it was a rash. Ernesto liked to play with his penis, but it had not been bruised before. In response to being told that Ernesto had stated that Mario had pulled his penis, Mother stated that Mario was a friend, not her boyfriend, and she used to work with him at the Los Angeles Times. He would

² The interpretation of “huevitos” to mean penis by the social worker is probably incorrect. The term “huevitos” means little eggs and is probably referring to the testicles. In any event, there was evidence that Ernesto’s penis was also bruised.

see the children approximately once a month, and would sometimes take the children to get ice cream. When Ernesto saw Mother with Mario, he would get jealous and say, “Mia Julia.” Ernesto’s father had never provided for him and lived in Mexico. The father had not seen Ernesto since Ernesto was 10 months old.

Carmen told the social worker that she never saw Mother hit the children. Mother yelled at the children when she was upset. She saw bruises twice before on Ernesto’s face. When Ernesto fractured his leg in February 2002, Mother brought him to Carmen’s house and told her that he had been crying and pulling at his leg. Carmen noticed Ernesto’s left leg looked crooked and she took Ernesto to the doctor’s office. He had a cast for three weeks. Carmen never knew how Ernesto fractured his leg, and Mother had not offered any explanation. On April 24, 2002, when Carmen noticed the bruises, Ernesto told her Mario had done it. On May 3, 2002, when Ernesto was placed in her home, she changed his diaper and Ernesto told her that Mario had pulled on his penis, and he began to tug at his penis with his hand as he told her this.

The jurisdiction hearing report noted that Ernesto’s hemoglobin test was normal. Dr. Cook, who examined Ernesto at the hospital on April 24, 2002, noted that there were four red marks on Ernesto’s left cheek and only one on the right side, which was indicative of squeezing. Dr. Cook ordered blood tests and x-rays for Ernesto, and they were all normal. Dr. Cook believed the trauma to Ernesto’s penis could have been caused by someone pinching it.

At the continued jurisdictional hearing on July 9, 2002, the parties submitted a stipulation to admission of the social worker’s report because the social worker was ill and unable to appear.³

³ The following exhibits were received into evidence: The detention report dated April 29, 2002; the Jurisdiction and Disposition Report, the El Monte Police Report dated April 24, 2002, and El Monte Hospital records. The hospital records contained color photographs of Ernesto’s injuries. The Department subpoenaed the hospital’s records, including the photographs, but only received black and white copies. Mother introduced copies of Ernesto’s pediatric records.

At the jurisdictional hearing, Mother testified that in 2000, she traveled to Mexico with Ernesto. She worked six or seven days a week in an embroidery factory. While she was at work, Carmen, the children's aunt, babysat them. Carmen is Ernesto's father's sister. Mother had been using Carmen as Ernesto's babysitter since he was born, and had known her since Corin was a year and a half old. Ernesto's father did not see him and did not give Mother any assistance with Ernesto.

On April 21, 2002, the bruise on Ernesto's ear appeared. This was the third time he had gotten "spots" on his ears. Mother did not know of anyone who was striking or hitting Ernesto. He played with other children, but she did not believe they hit him. On April 23, 2002, Carmen told her that Ernesto had a bruise on his penis. Mother had dropped him off without changing his diaper, so she had not actually seen his penis that morning. Later that day, Mother looked at his penis, and she could see that it was red. This was the first time she had seen a red mark on Ernesto's penis. She did not know what had caused the redness, but she did not ask Ernesto what happened. Carmen also did not know what caused the redness. Mother was concerned, but Ernesto had not complained about any pain.

Because she was working, it was difficult for Mother to leave work at the embroidery factory to take care of the children or to take them to the doctor. She took the children to the clinic when she had time available. Mother was a single mother and cared for the children all by herself; she did not receive welfare or food stamps. Ernesto had been hospitalized for bronchitis three times. Mother was at the hospital with him all of those times. Mother denied hitting her children. She testified Ernesto often played with his penis by pulling on it. She believed the redness on Ernesto's face was caused by a blood disorder or allergies because the doctor who saw Ernesto in February 2002 told her it was caused by allergies, and gave her a cream, which worked. On April 24, 2002, the doctor at the clinic (where they took Ernesto before they took him to the hospital) told her Ernesto had a virus or low platelets.

Ernesto was taken to the clinic because it was the third time he had gotten “those purple spots” and Mother did not believe it was allergies. She thought the redness on his penis was related to the spots on his ears. When she called the clinic, she did not tell them about the injury to Ernesto’s penis because she thought it was related to the “spots” he had before.

On April 24, 2002, at the hospital, Mother spoke to a nurse. The nurse told her Ernesto’s injury was caused by abuse. She did not speak to the doctor. At the hospital, the social worker asked her if she knew how Ernesto had received the marks on his cheeks, and she told him that previously, the doctor at the clinic where they had taken him said Ernesto had a virus in the blood.

Mother testified that Ernesto was an active child who often fell and hurt himself, but usually only got scratches, not bruises, from playing. He played with other children at the neighbor’s house in a common yard that Mother shared with her neighbors. The afternoon he received his injuries, he was playing on a skateboard by placing his face on the skateboard and walking with his hands.

Carmen testified she had been a friend of Mother for about six years. She had taken care of Ernesto since he was born, except for the time that Mother took him to Mexico. Mother usually dropped the children off at 7:00 a.m. and picked them up at 3:30 or at 6:00. When Ernesto was dropped off at Carmen’s house, sometimes his diaper had not been changed. The first time she saw a purplish discoloration on Ernesto’s ear was in January 2002. She took him to the doctor in February because of his leg and spots on his face. The doctor told her it was an allergy. The doctor gave her a cream to use.

On Monday April 22, Carmen noticed marks on Ernesto’s face and ear, and on Tuesday, they were darker. They were “little dots.” On Tuesday she also noticed the bruise on his penis, and told Mother she was going to take Ernesto to the doctor. The marks on his face appeared to be the same marks as she had seen in January and February 2002, and she thought the mark on his penis was related to it. In January when she first saw the marks, she asked her sister, who is a pediatrician who lived in Mexico, about

them. Her sister told her Ernesto might be anemic and that they should get a blood test. She did not take him for a blood test at that time because the spots would come and go. She took him for a blood test in February. The doctor did not tell her if there was anything wrong with Ernesto's blood, but he gave her a cream. When they ran the blood tests at the hospital, she was not given the results.⁴

On April 24, Carmen noticed that the bruises on Ernesto's face looked the same, but it seemed like there were more of them and they were more "intense." His penis was still purple. Carmen took him to the clinic at 10:00 a.m. on April 24 when it opened. The doctor told her it was not a low platelet count, but a blood virus. After she left the clinic, she took him to the hospital. She told the interpreter at the hospital that the previous doctor told her it was an allergy. Carmen denied hurting Ernesto.

Carmen had never seen Mother hit the children and had an agreement with Mother to take the children to the doctor if they were sick or injured. Ernesto threw himself on the floor when he had tantrums. He jumped all over the place when he was playing. Carmen's six-year-old son played with Ernesto. At the time Ernesto broke his leg, no one at the hospital said they suspected child abuse. Ernesto played with his penis all the time when he was in the bath or when he had his diaper changed. When Carmen told him to stop he would quit. Sometimes if he squeezed it too hard he yelled "ouch."

Carmen had been taking care of Ernesto since May 2002. Since that time, he had not had any marks on his ears or face.

Dr. Cook testified he is board certified in emergency medicine. When he saw Ernesto, Dr. Cook took his medical history. Mother told him Ernesto had a rash on his face and penis. He also had a runny nose and a cough. Ernesto had been admitted to the hospital once before for bronchitis. Mother denied that Ernesto had been slapped. Dr. Cook examined Ernesto's head, face, eyes, ear, nose, throat, neck, chest, heart,

⁴ It is unclear from this testimony whether Carmen was referring to Ernesto's hospital visit in February 2002 for his leg, or to the visit in April 2002.

abdomen, extremities, and genitalia. Dr. Cook noticed “linear markings that [were] small areas of bleeding below the skin, which I interpreted . . . as probable finger marks. And also there was very noticeable purple discoloration of the left ear compatible . . . with a lot of bruising of the left ear. And the tip of the penis was swollen and purple. In other words, there was bleeding of the tissue of the foreskin of the penis.”

The lines on Ernesto’s cheeks were parallel, indicating they were probably caused by someone squeezing his face with their hand. The bruises on Ernesto’s ear appeared to be caused by pinching his ear between the thumb and forefinger. A fall could have caused the bruising, but there was no history of a fall. The bruising looked to be from a few hours to two or three days old. If the discoloration on Ernesto’s ear had been caused by an allergy, it would have been on both ears. Dr. Cook believed Ernesto’s penis had been squeezed very hard, likely between thumb and index finger. To cause the injury, someone would have had to pinch as hard as they could. Dr. Cook did not believe the injuries to Ernesto’s penis resulted from an allergy.

Dr. Cook noticed that Ernesto’s left eardrum was red, probably from an infection, but he thought it was unrelated to Ernesto’s other injuries. The marks on Ernesto’s face were petechia, which are small, pinpoint areas of bleeding beneath the skin. Petechia is caused by trauma, and can be caused by spontaneous bleeding due to a blood problem. Dr. Cook ordered blood tests, and the results were normal except for mild anemia. Mild anemia would not account for petechia, nor does petechia resemble eczema. Ernesto’s injuries were not self-inflicted. Even if Ernesto liked to pull at his penis, such pulling would not have caused the injury.

At trial, Dr. Cook testified that he had a good recollection of Ernesto’s facial injuries. Dr. Cook concluded that Ernesto’s injuries were the result of child abuse. He had diagnosed cases of child abuse before and had testified in court.

On cross-examination, Dr. Cook testified that Mother denied Ernesto was slapped. Dr. Cook did not ask Mother if Ernesto was with her all day, or whether Ernesto was with Carmen. Carmen gave no explanation for the injuries. Although Dr. Cook could not

remember exactly what each of the women told him; if any explanation had been given, he would have written it in the record. He did not ask Carmen or Mother if Ernesto was active, but his impression of Ernesto was that he was an active child. The injuries to Ernesto's face would not have been caused by someone just grabbing his face trying to get Ernesto's attention. The person who grabbed Ernesto's face applied a lot of pressure. Even if Ernesto had been diagnosed with eczema before, that would have no bearing on Ernesto's current injuries.

In Dr. Cook's opinion, Ernesto's injuries would have been painful. At the time Dr. Cook examined Ernesto, he did not believe he was in pain. Dr. Cook did not believe Ernesto caused his own injuries. They would have caused too much pain. Even if Ernesto had a history of pulling on his penis, that would not have caused his injuries. Dr. Cook did not have any information that Ernesto had previously been abused.

Dr. Cook was not board certified in pediatrics. Dr. Cook explained the notation on Ernesto's chart that stated "skin rash" as being his record of the complaint that was reported to him. The injuries to Ernesto's penis could have been caused by a "crush injury," but they were not caused by masturbation. Dr. Cook believed it was unlikely they were caused by a fall. Dr. Cook's review of Ernesto's prior medical records indicated that he received hydrocortisone for eczema and an antibiotic for his ear infection.

Detective Eric Youngquist of the El Monte Police Department testified that he interviewed Mother and Carmen on April 24, 2002. Mother was unable to provide a detailed response as to the origin of the injuries, but stated there was a possible blood disorder. Carmen reiterated to him the possibility of a blood disorder. Mother had first noticed Ernesto's injuries on the morning of April 23, 2002. Carmen noticed them on April 24, 2002, after Mother dropped him off and she changed his diaper, but Mother had not mentioned Ernesto's injury to Carmen when she dropped him off. On the other hand, Mother told Detective Youngquist that she informed Carmen of Ernesto's injuries. Detective Youngquist confronted the two women with the inconsistencies in their

statements and “each party remained adamant that they were telling the truth.” Carmen noticed the injuries to Ernesto’s face and ears after she discovered the bruise on his penis. Detective Youngquist had an evidence technician photograph Ernesto’s injuries.

Detective Youngquist described his observations of Ernesto’s ear as “a bruising in the inner portion of the ear. And it was little bit darker in color, like almost a purplish, slight purplish color, or a light purple color.” Ernesto’s cheeks appeared to have an irritation of the skin in addition to the redness. Detective Youngquist observed “obvious bruising” on both sides of Ernesto’s penis. Neither Carmen nor Mother provided him with an explanation of this injury.

Detective Youngquist arrested Mother as a result of his investigation. Detective Youngquist’s report indicated he estimated Ernesto received his injuries between 3:30 p.m. on April 22 and 7:00 a.m. on April 23, 2002. This estimate was not based upon medical information.

Detective Youngquist interviewed Mario. Mario was shown the photographs of Ernesto’s injuries, but denied causing them. Detective Youngquist ruled Mario out as a suspect because “he was described by the mother as being a friend of the family and not really having access to the children to cause this type of this injury and as well as his denial of the accusation and the relationship -- he didn’t have any extended time period to cause, or any reason, in my opinion, to cause these injuries.”

Detective Youngquist also ruled Carmen out as a suspect because he was impressed with her ability to care for the child when Ernesto had medical problems. Although this did not exclude her as a suspect, given the overall picture, i.e., that Mother was the person most likely to have caused Ernesto’s injuries and did not get medical care for Ernesto on numerous occasions, Detective Youngquist did not consider Carmen a suspect. Detective Youngquist did not ask Mother about her work schedule and whether that affected her ability to take Ernesto to the hospital. He thought work should take second priority to a child’s health care needs. Neither Mother nor Carmen explained

whether they had an arrangement that when Carmen was babysitting, she took care of Ernesto's health care needs.

After the close of evidence and argument of counsel, the court stated to the Department:⁵ "I must tell you that your doctor was totally unimpressive. He was not qualified as an expert in any area, except possibly his own area of emergency room medicine. He is not an expert in child abuse. He told us he was not an expert. He questioned what anyone even meant when people tried to say he was an expert. He was not an expert in child abuse. He was not an expert in dermatology. So regarding whether this was abuse, I cannot rely on his statements that it was abuse. [¶] His testimony of what he saw and how he formed his conclusion was minimal. People could have gone into more of how he knew, how much of this he had seen, where he had seen it before, what he had studied, how he had come to recognize it, why it was different from allergy, why it was different from other dermatology type or related conditions. Nobody went into detail, so I am left with someone who is -- who is not an expert in any of these areas, that gave very minimal information to the court regarding his findings or his conclusions."

With respect to the pictures, which the court examined, the court stated: "Now regarding whether there was bruising in the pictures, I can't say -- the pictures -- it looks like it could be a rash, but as I tried to look more closely at the pictures, underneath, I could . . . see there might have been something purple that looked like bruising, but because I'm not an expert and because people did not question -- and I'm looking at [picture] Number 5 again. That seemed to be the best picture. Number 6 -- I can't tell whether it's a shadow or that purplish underbruising -- it might be because when I'm looking at 5, towards the back, towards the ear, it looks like it might be."

⁵ Because of the detailed nature of the court's commentary on the evidence, we set it forth verbatim.

Given the fact that Carmen did not tell Dr. Cook that Ernesto pulled on his penis, that Dr. Cook would not have been able to identify Carmen or Mother, the court found that “it’s not clear to the Court that the doctor’s testimony that the marks on the ears and the face were abuse or some other injury -- it’s just not clear to the court. His [Dr. Cook’s] recollection was not good at all. Most of what he testified [to] was from his notes. . . .” Furthermore, Dr. Cook could not determine ages of the bruises, which the court found appalling. “Almost every doctor, whether they are an emergency room doctor or a child abuse expert or any other kind of doctor, who’s ever come into this courtroom has been able to give us some information and knowledge about bruising. . . . And I was amazed that this doctor couldn’t even -- at that level, which may have nothing to do with abuse, but has to do with his own medical training -- couldn’t talk about the age of the injuries or the bruising. [¶] With all of that, I don’t know how much weight I can give to his testimony regarding the face, the ears. [¶] Moving on to the penis -- something happened to that child’s penis. I don’t know what it was. And I looked at the pictures of it. And nobody talked about the color, the bruising, the significance of deep bruising, whether it was surface bruising, whether it was discoloration -- I don’t know -- but I do note that the child’s genitals -- and I’m now looking at Number 10 and Number 11. I’m holding them up so you can see them -- the color of the tip of the child’s penis is the part that’s bruised and discolored from what everyone says is an injury, with what the aunt thought was some other kind of a problem.” Because it had no information on how Ernesto’s injuries were treated, the court assumed the child was not treated, but that the bruising went away on its own.

Based upon these conclusions, the court dismissed the allegations under section 300, subdivision (e).

The court continued, “the police officer was -- his testimony was given in such a cavalier manner regarding who he believed, and it was his demeanor that was interesting to me. His demeanor did not inspire confidence. His testimony and his observations and how he came to his conclusions did not inspire confidence.” The court further stated it

found Mother's caretaking arrangements reasonable. "So the mother's behavior [at the hospital] was not unreasonable, from the court's point of view, based on the information that I have. So I'm not giving any weight to the officer's findings based on why he said he believed some people and he didn't believe others. He did not believe the mother because the aunt took the child to the hospital. That's not what I'm going to base anything on."

"Regarding whether the mother did it, there is no evidence whatsoever that this mother did or caused the injuries. That doesn't mean she didn't do it. It just means that I don't have any information that would cause me to think or believe, based on the facts, that she did it. [¶] . . . [¶] Now, counsel, that doesn't mean that she didn't do something to the child. But other than that testimony, I have no information that would cause the court to find that the mother caused the injuries or the bruising." The court noted that it "may be significant" that since Ernesto has resided with Carmen, his injuries have not returned.

With respect to the injuries to Ernesto's penis, the court stated, "Well, it does not happen by itself" and that it was "hard to believe that an allergy causes that kind of a reaction to the tip of the child's penis." The court stated it was not going to rely on Dr. Cook's testimony, "for the most part."

The court concluded, "What I don't know is what's going on in this family, if there's something that sets this child apart from Corin, but there's enough injury to this child for the court to be very concerned about his safety and his well-being. [¶] And he has not been further injured in the care of the aunt. And the court is going to find that he should stay there."

The court sustained part of the petition. With respect to section 300, subdivision (a), the court found "deliberate" had not been proven. The court struck the allegations of the petition with respect to the injuries to the face, but left those portions of the allegations regarding the penis. The court dismissed allegations under subdivisions (a)

and (j), found the minor described and declared a dependent pursuant to subdivision (b), and ordered visitation and reunification services for Mother.

DISCUSSION

A. Standard of Review.

At the jurisdictional hearing, the dependency court's finding that a child is a person described in section 300 must be supported by a preponderance of the evidence. (§ 355, subd. (a); *Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 248; *In re Sheila B.* (1993) 19 Cal.App.4th 187, 198.) On appeal, in reviewing a challenge to the sufficiency of the dependency court's jurisdictional findings, our power begins and ends with a determination as to whether substantial evidence exists, contradicted or uncontradicted, supporting the juvenile court's determinations. We review the evidence in the light most favorable to the juvenile court's findings and draw all reasonable inferences in support of those findings. (*Elijah R. v. Superior Court* (1998) 66 Cal.App.4th 965, 969; *In re Basilio T.* (1992) 4 Cal.App.4th 155, 168.) Thus, we do not consider whether there is evidence from which the dependency court could have drawn a different conclusion but whether there is substantial evidence to support the conclusion that the court did draw. (*In re Rubisela E.* (2000) 85 Cal.App.4th 177, 194-195; *In re Stephanie M.* (1994) 7 Cal.4th 295, 319.) In reviewing a dispositional finding that must be supported by clear and convincing evidence, such as the dispositional finding in this case that there existed a substantial danger to the physical and emotional well-being of Ernesto and there was no reasonable means to protect him without removing him from Mother's custody (§ 361, subd. (c)), we determine whether substantial evidence supports the trial court's finding. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.)

B. Substantial Evidence Supports Jurisdiction Under Section 300, Subdivision (b).

Section 300, subdivision (b) provides in relevant part that that a child is subject to dependency court jurisdiction if the “child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child. . . .” (§ 300, subd. (b).) Before courts exercise jurisdiction over a child under subdivision (b), there must be evidence “indicating that the child is exposed to a *substantial* risk of *serious physical* harm or illness.” (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 823.) In a nutshell, section 300, subdivision (b) requires parental neglect that causes serious physical harm or illness or the substantial risk of either. (*Id.* at p. 820.)

In evaluating whether a substantial risk of serious physical harm or illness exists, courts rely on subdivision (a) of section 300, which authorizes jurisdiction where “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child’s parent or guardian.” (*In re Janet T.* (2001) 93 Cal.App.4th 377, 388.) Under subdivision (a),⁶ “a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child’s siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm.” (§ 300, subd. (a).) Under subdivision (b), however, past events are only probative if circumstances exist at the time of the hearing which make it likely the child will suffer the same type of serious physical harm or illness in the future. This limitation stems from the fact that under subdivision (b), a child may be a dependent only so long as is necessary to protect the child from serious physical harm or illness. (*In re Janet T., supra*, 93 Cal.App.4th at p. 388.) Past

⁶ Under both subdivisions (a) and (b), the Department has the burden of showing by a preponderance of the evidence specifically how Ernesto has been or will be harmed. (*In re Matthew S.* (1996) 41 Cal.App.4th 1311.)

harm, standing alone, therefore does not establish serious physical harm or illness; there ““must be some reason to believe the acts may continue in the future.”” (*In re Rocco M.*, *supra*, 1 Cal.App.4th at p. 824.)

In the instant case, there was evidence that Mother had failed to protect Ernesto from physical abuse. Ernesto had suffered bruising to his face on two prior occasions. He suffered a broken leg of unknown cause. The incident which brought him to the attention of the Department was the bruising to his face, ear, and penis. Although the dependency court was fairly explicit on the record of its evaluation of witness credibility, these facts -- all credited by the dependency court -- viewed in the light most favorable to the court’s ruling supports a finding of jurisdiction under subsection (b). The dependency court could have disbelieved the testimony concerning an “allergy” or “blood disorder” and concluded Ernesto had been handled roughly about the head and face before, whether by slapping or squeezing. Likewise, the court could have concluded Ernesto did not injure himself playing, but instead was hit or grabbed about the face and head, and that his penis was cruelly squeezed by someone,⁷ possibly in frustration over Ernesto’s habit of playing with it. (See *In re Basilio T.*, *supra*, 4 Cal.App.4th at pp. 168-169.)

C. Substantial Evidence Supports a Finding of No Jurisdiction Under Section 300, Subdivision (a).

The Department argues that under section 355.1, where an injury to a child is “of a nature as would ordinarily not be sustained except as the result of the unreasonable or neglectful acts or omissions of either parent . . . that finding shall be prima facie evidence that the minor is a person described by subdivision (a), (b), or (d) of section 300.” This presumption is a presumption affecting the burden of production, and Mother failed to rebut this presumption with her testimony. Thus, even if the dependency court was not

⁷ Dr. Cook testified that the injuries to the penis were not the result of masturbation, but were the result of an intentional “crush injury.”

impressed with the weight of the evidence, the testimony of Carmen and Dr. Cook supported application of the presumption of section 355.1.

Section 300, subdivision (a) provides in relevant part that the child is subject to dependency court jurisdiction where “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child’s parent or guardian. For the purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child’s siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm. . . .”

The dependency court did not find that it had enough evidence before it to conclude that *Mother* (the parent or guardian required by the statutory language of subdivision (a)) had inflicted Ernesto’s injuries. Furthermore, Section 355.1 requires *unreasonable* neglect or omission before the presumption is to apply. The record discloses the court found Mother’s health care arrangements for Ernesto were reasonable, and that Ernesto was taken to the doctor immediately upon discovery of his injuries. Based these findings, substantial evidence supports an inference that Mother’s conduct was not unreasonable in spite of the injuries suffered by Ernesto, given the fact there was no conclusive evidence she was the perpetrator. The dependency court properly dismissed the allegations under subdivision (a).

D. Substantial Evidence Supports the Dispositional Order.

Section 361, subdivision (c) states in relevant part, “A dependent child may not be taken from the physical custody of his or her parents or guardian or guardians with whom the child resides at the time the petition was initiated unless the juvenile court finds clear and convincing evidence of any of the following: [¶] (1) There is a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor or would be if the minor were returned home, and there are no reasonable means by which

the minor's physical health can be protected without removing the minor from the minor's parents' or guardians' physical custody."

"A removal order is proper if it is based on proof of parental inability to provide proper care for the minor and proof of a potential detriment to the minor if he or she remains with the parent. [Citation.] The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child." (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136, overruled on other grounds, *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6.) We consider whether substantial evidence supports the juvenile court's determination that the evidence mandated Ernesto's removal from Mother's custody. (*In re Basilio T.*, *supra*, 4 Cal.App.4th at p. 170.) In making this determination, the child's best interests are paramount. (*In re Corey A.* (1991) 227 Cal.App.3d 339, 346-347.) "The court has broad discretion to determine what would best serve and protect the child's interest and to fashion a dispositional order in accord with this discretion." (*In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1006.)

Here Ernesto was the victim of physical abuse that occurred on more than one occasion. Although it was unclear whether Mother was actually the perpetrator, Mother claimed she had no idea how Ernesto broke his leg or sustained the severe bruises to his penis, and Mother did not believe Ernesto when he told her Mario had done it. The evidence supports an inference that Mother concealed the injury to Ernesto's penis from Carmen, and that Mother displayed no insight into the situation. Ernesto, who was only two and one half years old, when these events were occurring, was and is a very little boy who needed to be protected from further abuse. These grounds support removal of the child from the home.

DISPOSITION

The order of the superior court is affirmed.

MUÑOZ (AURELIO), J.*

We concur:

PERLUSS, P. J.

JOHNSON, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.